

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

CARLOS ABRAHAM MARTINELLY-MONTANO,  
#1452008

Petitioner,

v.

CIVIL ACTION NO. 2:17cv367

HAROLD W. CLARKE, Director,  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on February 3, 2012, in the Prince William County Circuit Court, for one count of felony murder and five other offenses following a fatal car accident resulting from his third DWI within five years. As a result of the convictions Petitioner was sentenced to serve six concurrent sentences totaling 20 years of active incarceration.

The matter was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Report and Recommendation filed February 8, 2018, recommends dismissal of the petition with prejudice as barred by the federal statute of limitations. (ECF No. 16). Each party was advised of his right to file written objections to the findings and


recommendations made by the Magistrate Judge. On March 12, 2018, the court received Petitioner's Objections to the Magistrate Judge's Report and Recommendation. (ECF No. 19). The Respondent has filed no response and the time for doing so has now expired.

The court, having reviewed the record and examined the objections filed by the parties to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation filed February 8, 2018 (ECF No. 16). It is, therefore, ORDERED that Respondent's Motion to Dismiss (ECF No. 11) be GRANTED and the Petitioner's petition (ECF No. 1) be DENIED and DISMISSED with prejudice.

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk is directed to mail a copy of this Final Order to Petitioner and to provide an electronic copy of the Final Order to counsel of record for Respondent.

/s/   
MARK S. DAVIS  
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

March 27, 2018